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February 12, 1996

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

RE: Uniform Rate-Setting Methodology  
CS Docket No. 95-174

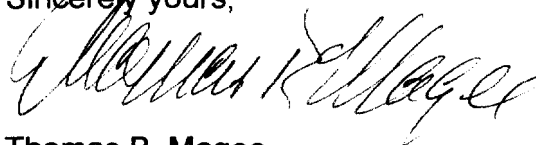
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Dear Mr. Caton:

Pursuant to paragraph 35 of the November 29, 1995 "Notice of Proposed Rulemaking" in the above-referenced proceeding (FCC 95-472), attached please find an original and nine copies of the "Comments of the Ohio Cable Telecommunications Association", to be filed in that proceeding. It is requested that each individual Commissioner receive a copy of this pleading. These Comments are being filed today instead of January 12, 1996 pursuant to instructions in the Public Notice dated January 11, 1996 (DA 96-11).

Please contact the undersigned counsel if you have any questions regarding this submission.

Sincerely yours,



Thomas B. Magee  
Attorney for  
**Ohio Cable Telecommunications  
Association**

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Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of Sections of )  
the Cable Television Consumer )  
Protection and Competition Act )  
of 1992 -- Rate Regulation )

Uniform Rate-Setting Methodology )

CS Docket No. 95-174

**COMMENTS OF THE  
OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

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February 12, 1996

## **Summary of Argument**

The Ohio Cable Telecommunications Association (“OCTA”) commends the Commission for its uniform rates proposal. The current franchise-by-franchise rate calculations have required multiple mailings, multiple subscriber notifications, constantly changing rate cards, and multiplied costs. Subscribers, therefore, as well as cable operators, will benefit from uniform rates.

For the uniform rate proposal to succeed, measures must be taken to simplify how uniform rates are calculated and to streamline the regulatory approval of those calculations. To be of most benefit, operators should be given the discretion to select which region is to be covered by uniform rates and which systems should be included in the calculations. Moreover, in calculating uniform rates, operators should be permitted to select whichever approved method makes the most sense for their systems.

Charges for PEG channels and for franchise-related costs should be calculated separate from charges for uniform basic service tier rates. Regulatory approval of initial uniform rates should be vested exclusively in the FCC, and procedures for LFA and FCC review of proposed increases should be streamlined. In addition, operators should be permitted, but not required, to offer uniform rates for

subscriber equipment. Finally, any restrictions on the full recovery by operators of uniform rates are not justified, especially considering the administrative burdens re-regulation has imposed on cable operators.

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**In the Matter of**

**Implementation of Sections of  
the Cable Television Consumer  
Protection and Competition Act  
of 1992 -- Rate Regulation**

**Uniform Rate-Setting Methodology**

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**CS Docket No. 95-174**

**COMMENTS OF THE  
OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

In response to the Notice of Proposed Rulemaking ("NPRM") released November 29, 1995 in the above-captioned proceeding, the Ohio Cable Telecommunications Association ("OCTA"), by its attorneys, files these Comments in support of the Commission's proposal to establish a uniform rate-setting methodology.<sup>1</sup>

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<sup>1</sup> The date for filing comments was extended to February 12, 1996 by the Public Notice dated January 11, 1996 (DA 96-11).

## I. INTRODUCTION

The Commission's current rate regulations require operators to have their rates set on a franchise-by-franchise basis. This requirement has imposed unnecessary costs into the rate-setting process. Operators in some technically integrated systems have been forced to justify their rates through multiple proceedings when a unified proceeding would have been far more cost effective. Because of the varied timing of various local franchising authorities' ("LFAs") review processes, contiguous systems have had to implement rate adjustments, which include decreases as well as increases, in stages. This has required multiple mailings, multiple subscriber notifications, constantly changing rate cards and multiplied costs. Neighbors often have different rate cards and channel line-ups even when served by the same provider. The increased costs, administrative burden, subscriber confusion and subscriber dissatisfaction caused by requiring that rates be set on an individual franchise basis benefit no one. The Commission, moreover, has already acknowledged the benefits of uniform rates in certain universal rate settlements.<sup>2</sup>

OCTA supports the Commission's uniform rate proposal as a much-needed initiative to help operators reduce their administrative and marketing costs, while at the same time providing additional benefits to subscribers and LFAs. In addition to providing administrative relief, uniform

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<sup>2</sup> See Social Contract for Time Warner, FCC 95-478, at paras. 37-41 (released Nov. 30, 1995) (equipment and installation averaging); Social Contract for Continental Cablevision, FCC 95-335, at paras. 26-32, 49-52 (released Aug. 3, 1995) (equipment and installation averaging, uniform system-wide basic service tier rates).



rates will enable operators effectively to advertise rates and market cable programming in the face of increasing competition from other multichannel service providers. At the same time, uniform pricing should reduce the administrative costs of local franchising authorities, particularly those operating on a state-wide or county-wide basis, by reducing the variety of channel line-ups and rates they must review. Finally, subscriber confusion is likely to be reduced by enabling operators to provide current and future subscribers with consistent rates and consistent service offerings.

OCTA therefore supports the Commission's efforts to establish a uniform rate-setting methodology and respectfully offers the following Comments addressing specific elements of the Commission's proposal.

## **II. COMMENTS**

### **A. Systems To Be Included In The Uniform Rate Calculation**

#### **1. Operators should be permitted to select the region in which to establish uniform rates.**

The NPRM requests comments on how to define the region which should be covered by uniform rates, and suggests that Areas of Dominant Influence ("ADIs") or some other geographic boundary, such as county or state lines, might be appropriate. The Commission also suggests that cable operators themselves might select the region in which uniform rates may be set.

Operators should be permitted to select the region to be covered by uniform rates. To require that all cable operators be restricted by the same

boundary establishes an artificial constraint that is neither necessary nor efficient.<sup>3</sup> Each cable operator has its own unique mix of systems with different programming services and other system characteristics. These different systems are spread over a variety of geographic, demographic and political settings. Only cable operators themselves are qualified to choose which geographic or other boundary is most efficient for establishing uniform rates. Moreover, any regulatory efficiencies to be gained by constraining operators to the same artificial boundary are minimal. The systems which an operator decides to include in uniform rates will be identified in public rate filings, easily obtainable by any interested party. Finally, cable subscribers are protected no matter which region the operator selects because the uniform rate concept is revenue-neutral. In sum, permitting operators to select the region in which to establish uniform rates is helpful to operators, promotes economic efficiency, raises minimal regulatory concerns, and protects subscribers with reasonable rates.

The NPRM proposes that operators be permitted to establish uniform rates in multiple franchise areas regardless of whether one or several headends serve the multiple franchise areas. As stated, OCTA supports allowing operators to choose an area for uniform pricing based on business considerations. The fact that an area is composed of systems served by

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<sup>3</sup> The problems that have occurred in setting artificial boundaries can clearly be seen by reviewing the numerous pleadings seeking must-carry relief, which were filed because the artificial designation of markets does not parallel with market realities.

different headends is not a sufficient reason for restricting an operator from making a business-oriented decision.

**2. Operators should be permitted to select the systems to be included in uniform rates.**

In addition to allowing cable operators to choose the region within which to establish uniform rates, operators should be permitted to select which systems in the region should be included in uniform rate calculations. There are several reasons why this discretion is appropriate. First, a variety of business reasons might compel operators to refrain from modifying their service offerings and rates for certain systems in the region. Such business reasons might include the unique demographic or economic characteristics for a particular system, subscriber satisfaction with existing programming services and rates, or competitive market considerations. Second, permitting operators to select the systems to be included in uniform rates is harmless to subscribers, who continue to be protected by the revenue-neutrality of uniform rates. Finally, as with the proposal to allow operators to select the region in which to establish uniform rates, permitting operators to select the systems subject to uniform rates has only a minimal impact on regulators seeking to review uniform rates.

## **B. Uniform Service Offerings**

### **1. Rates for uniform service tiers should be consistent with sound business practices.**

The Commission's current channel addition rules make it difficult for many operators to create substantially similar BST and CPST tiers. This is true primarily because the current rules limit the ability of operators to add channels to regulated service tiers. Operators who elected the Mark-Up method have little incentive to add low-cost channels because the 7.5% mark-up on a low-cost channel is negligible. This method thus has been ineffectual for those operators wishing to add no-cost or low-cost channels. Operators who elected the Caps method may not use it to add channels to their BSTs, and are limited in the number of new channels they may add to their CPSTs. Operators are further limited under the Caps method because many operators already have used up much of their Operator's Caps and License Fee Reserves.

Unless operators are better able to add channels to their BSTs and CPSTs, the Commission's goal of equalizing service offerings may make it impossible for many operators to establish uniform rates. OCTA therefore proposes that the following changes be implemented to the Commission's channel addition rules in order to permit the establishment of substantially similar service offerings.

Operators that structure uniform service tiers should be permitted to add channels to BST and CPST line-ups to the extent necessary to equal the number of channels offered on the operator's system with the largest number of

channels on each of these tiers. Allowing operators to add channels to this extent benefits cable subscribers by increasing their service choices and furthers the 1992 Cable Act's goals of "promot[ing] the availability to the public of a diversity of views and information," and "ensur[ing] that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems."<sup>4</sup>

OCTA proposes that when creating uniform tiers, cable operators be permitted, at the operator's discretion, to add channels using one of the following methods. The first of these channel addition proposals is the familiar "Mark-Up" method, which permits the recovery of license fees plus 7.5% in addition to a per channel adjustment. The second method is a flat per-channel adjustment similar to the increase permitted using the "Caps" method established by the Sixth Reconsideration Order,<sup>5</sup> with certain modifications.

Under this second channel addition method, the flat per-channel increase should be set at \$0.20 per channel, plus an additional \$0.05 per channel to compensate the operator for license fees. The amount of these per channel adjustments is appropriate, since these figures have already been approved to a certain extent in the Sixth Reconsideration's "going-forward" rules. That Order determined that these per channel increases of \$0.20 plus \$0.05 fall safely within the historical range of increases that cable operators would pass

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<sup>4</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, Section 2(b)(1) and (2), 106 Stat. 1460 (1992) ("1992 Cable Act").

<sup>5</sup> Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), MM Docket No. 92-266, 10 FCC Rcd 1226 (1994) ("Sixth Reconsideration").

through in a competitive environment. The Sixth Reconsideration therefore approved them for channel addition purposes.<sup>6</sup>

The ceilings on the recovery of per channel adjustments under the going forward rules, the “Operator’s Cap” and the “License Fee Reserve”, are not necessary to restrain operators seeking to create substantially similar service offerings. Eliminating these ceilings on the recovery of per channel adjustments is appropriate because the Sixth Reconsideration’s concerns which compelled the ceilings are absent when operators merely add channels to structure uniform tiers. Because operators can add no more channels than are necessary to establish uniform service offerings, there should be no concern that absent an Operator’s Cap cable operators would be inclined to add large numbers of channels to boost rates.<sup>7</sup> There should also be no concern that consumers will be forced to pay for “an unlimited number of channels in CPSTs.”<sup>8</sup>

For similar reasons, a License Fee Reserve is also unnecessary. When structuring uniform tiers, operators can only add specific programming in order to render the services offered on all of their uniform rate systems substantially similar. Since only substantially similar channels may be added, the Sixth Reconsideration’s concern that a license fee reserve is needed to restrain operators from adding only no cost or low cost channels is absent.<sup>9</sup>

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<sup>6</sup> Sixth Reconsideration at paras. 73, 81.

<sup>7</sup> Id. at para. 77.

<sup>8</sup> Id. at para. 78.

<sup>9</sup> Id. at para. 82.

**2. The charge for PEG channels must be separately calculated.**

The NPRM recognizes that different franchise areas may have different public, educational and government (“PEG”) channel requirements, so that BST programming services may never be identical from franchise area to franchise area. The NPRM seeks comment on what, if any, adjustments must be made to compensate for different PEG offerings.

OCTA submits that where operators establish uniform BST rates, the charges attributable to PEG service offerings should be calculated separately from the charge for all other BST programming. Uniform BST rates would therefore be composed solely of non-PEG BST programming. PEG costs, as permitted by Section 623(b)(4) of the 1992 Cable Act,<sup>10</sup> would be listed as a separate line-item on subscriber bills based on the cost of PEG access in that particular franchise.

**C. Calculation Of Uniform Rates**

**1. Operators should be permitted to select any approved formula for the calculation of uniform rates.**

The NPRM proposes two different methods for operators to use in calculating uniform rates, and requests commenters to propose other methods that might be appropriate. In general, the first method would reduce BST rates across the region to the lowest BST rates charged in the region, and allow

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<sup>10</sup> 47 U.S.C. Section 543(b)(4).

recovery of the resultant revenue loss through an increase in CPST rates. The second method would allow operators to charge average, or “blended” BST and CPST rates.

Because each of these proposed rate-setting methods is revenue-neutral, using either one to set uniform rates will protect cable subscribers from unreasonable BST and CPST rates. In addition, because each of these methods is easy to calculate and easy to administer, the administrative burdens on cable operators and local franchising authorities should be minimal.

Since both of these proposed methods are reasonable, OCTA submits that cable operators should be permitted to select the formula that is most appropriate for their systems. This choice is necessary because each cable operator will have its own opinion of which method makes the most business sense. As an example, each operator will have different views of whether BST rates should be reduced to the lowest BST rate, with CPST subscribers making up the difference. The choice of methods for calculating uniform rates is therefor best left to the discretion of cable operators.

**2. Operators with small system BST rates established by FCC Form 1230 and with unregulated CPST rates should be able to include those rates in the calculation of uniform rates.**

The Commission has permitted small cable systems owned by small cable companies to establish rates using FCC Form 1230, which provides a rebuttable presumption that rates of \$1.24 per channel or less are reasonable



BST and CPST rates. The Telecommunications Act of 1996 deregulates the CPST rates of small systems owned by small cable operators, but retains local franchising authority regulation of BST rates. OCTA requests the Commission to clarify that Form 1230 BST rates and unregulated small cable company CPST rates may be included in the calculation of uniform rates. Form 1230 BST rates should be included because regardless of whether a rate established using the small system cost of service rules is higher or lower than rates established using benchmark rates, such a rate must be approved by LFAs and the Commission, and is therefore a reasonable rate. There is no reason to prohibit operators from including reasonable Form 1230 rates in the calculation of uniform rates. Small operator CPST rates which are unregulated as a result of the 1996 Telecommunications Act should also be included in the calculation of uniform rates because both Congress and the Commission have recognized that small cable operators need certain administrative and regulatory relief, and because uniform rates are exactly the sort of relief that small systems need.<sup>11</sup> In fashioning small system relief, the Commission recognized that small systems have particular difficulty “in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks and to prepare for potential competition.”<sup>12</sup> The Form 1230 rules were promulgated to provide relief for the “higher costs of doing business” faced by small systems.<sup>13</sup> Since one of

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<sup>11</sup> See Sixth Report and Order and Eleventh Order on Reconsideration (Implementation of Sections of the Cable Television and Consumer Protection and Competition Act of 1992: Rate Regulation), MM Docket No. 92-266, 10 FCC Rcd 7393 (1995) (“Eleventh Reconsideration”).

<sup>12</sup> Id. at 7406, para. 25.

<sup>13</sup> Id. at 7420, para. 55.

the goals of the proposed uniform rate methodology is to reduce administrative costs, uniform rate relief should also be extended to the small systems which need it the most.

**3. Franchise-related costs must be excluded from the calculation of uniform rates and separately identified.**

The NPRM proposes that cable operators establishing uniform rates be required to itemize and charge for franchise-related costs outside of the uniform rate-setting formula, so that separate charges and separate line-items on bills would be established for franchise-related costs. OCTA supports this proposal. Franchise-related costs, like requirements for PEG access channels, may vary significantly from franchise area to franchise area. Unless franchise-related costs are excluded from the calculation of uniform BST rates, uniform rates will be impossible to calculate. Excluding franchise-related costs would therefore simplify the calculation of uniform rates and be consistent with the intent of Congress that the Commission establish a rate formula “that is not cumbersome for the cable operator to implement nor for the relevant authorities to enforce.”<sup>14</sup> In addition, franchise-related costs should be excluded from the calculation of uniform rates because it is unfair to require subscribers in an area with low franchise-related costs to pay the higher franchise-related costs attributable to another franchise area.

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<sup>14</sup> H.R. Rep. No. 628, 102d Cong., 2d Sess. 83 (1992).

**D. Regulatory Oversight Of Initial Uniform Rates And Proposed Increases**

**1. Review of a cable operator's initial uniform rates should be performed exclusively by the FCC.**

The NPRM anticipates little if any need for LFA review when initial uniform rates are calculated using the first proposed method (lowest BST rate method), but anticipates some amount of LFA involvement in the approval of initial uniform rates established using the second method (blended rate method).

OCTA respectfully submits that in either case only the FCC is qualified to review the initial calculation of proposed uniform rates, and should therefore be the only regulatory authority to review initial uniform rate proposals. Review of an operator's initial uniform rates requires that all of the rates the operator charges in different franchising areas be reviewed. It is inappropriate for one local franchising authority to review the rates charged by cable operators in other franchise areas. The Federal Communications Commission, on the other hand, has jurisdiction over operator rates throughout the country, and is therefore the only entity qualified to approve rates which must be calculated using rates established in more than one franchise area. On top of these jurisdictional concerns, it is impractical and unnecessary to coordinate numerous local rate proceedings and decisions, each of which might reach different determinations of what initial uniform rates should be. Finally, establishing the FCC as the sole regulatory body to review initial uniform rates is consistent with the 1992 Cable Act's requirement that the Commission "seek to reduce the

administrative burdens on subscribers, cable operators, franchising authorities, and the Commission.”<sup>15</sup>

As to the date that initial proposed uniform rates should become effective, OCTA proposes that initial uniform rates become effective any time 30 days after they are filed with the Commission, subject to refund if the Commission later finds those rates to be too high.

**2. Streamlined procedures must be established to coordinate LFA and FCC review of proposed increases in uniform rates.**

The Commission should develop simple, streamlined procedures whereby proposed increases in uniform rates can be approved in a coordinated fashion by LFAs and the Commission together. Such coordinated approval will be impossible without streamlined procedures, since different franchising authorities will likely have different tolling and review periods, and will often reach different rate determinations involving different appeals by the cable operator.

To coordinate and streamline LFA and FCC review of proposed increases in uniform rates, OCTA tenders the following proposal. Cable operators should be required to submit proposed increases in uniform rates to all affected local franchising authorities 30 days in advance of the proposed effective date of the rates, and subscribers should be given 30-days notice of the rate increase. At the end of this 30-day period, the uniform rates would become

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<sup>15</sup> 1992 Cable Act, codified at 47 U.S.C. Section 543(b)(2)(A).

effective, subject to refund. Each LFA would be given 90 days within which to issue rate orders on the proposed increase. Any LFA which fails to issue a rate order during this 90-day period will forfeit its ability later to order refunds or a prospective rate reduction.<sup>16</sup> Upon the expiration of the 90-day review period, the cable operator proposing the increase should be given 30 days within which to file an appeal of any adverse rate orders that were issued. The operator's appeal would be a collective appeal encompassing all of the local rate orders issued during this period. Upon the filing of an appeal, all local rate orders issued by the LFAs would automatically be stayed. The Commission would then review the appeal and issue a rate order which establishes the reasonable level of both BST uniform rates and CPST uniform rates.

Streamlined procedures for LFA and FCC review of proposed increases are necessary to ensure not only that operators obtain the benefit of proposed rate increases without undue delay, but also to ensure that the uniform rates established by cable operators remain uniform throughout the uniform rate region. Without procedures to coordinate and streamline the review of proposed rate increases, the operator's rates in affected franchise areas might change each time another franchising authority issues a rate determination.

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<sup>16</sup> The Commission has determined that ninety days is adequate for LFA review of Form 1240 filings. See Thirteenth Order on Reconsideration, (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), MM Docket No. 92-266, FCC 95-397, at para. 93 (released Sept. 22, 1995), summarized at 60 FR 52106 (Oct. 5, 1995).

## **E. Miscellaneous Considerations**

### **1. Operators should be permitted, but not required, to offer uniform rates for subscriber equipment.**

The NPRM does not propose that cable operators be required or permitted to establish uniform equipment rates. Instead, the Commission seeks comments first on whether equipment rates should be calculated the way they are now, and second on how the calculation of regulated equipment rates will affect the setting of uniform rates.

OCTA requests that the Commission permit operators to establish uniform equipment rates, without requiring them to do so. Uniform equipment rates cannot be mandated because many operators use different subscriber equipment on different systems. Those operators who are able to charge uniform equipment rates, however, should be permitted to do so.

### **2. The proposed restrictions on the full recovery of uniform rates are unwarranted, especially considering the administrative burdens re-regulation has imposed on cable operators.**

The Commission anticipates that cable operators will enjoy a certain amount of cost savings as a result of being permitted to establish uniform rates. The Commission also believes that such cost savings may justify placing limitations on the recovery of uniform rates. The NPRM proposes two such limitations: (i) limiting the amount of increase a CPST subscriber must pay in a given year as a result of the institution of uniform rates; and (ii) phasing-in significant increases over a two-year period.

OCTA respectfully submits that these proposals are completely unjustified. The Commission's uniform rate-setting proposal is designed to be revenue-neutral, so that subscribers in the region as a whole will not pay more for cable service than they paid before uniform rates were established. As such, subscribers are fully protected from unreasonable rates as required by the Cable Act,<sup>17</sup> and there exists no harm for which subscribers must be compensated.

Moreover, because the Cable Act requires the Commission to "seek to reduce the administrative burdens on . . . cable operators,"<sup>18</sup> there is no reason why operators should not fully benefit from the Commission's efforts to reduce their administrative burdens. Instead, such relief from administrative burdens is completely justified to help operators alleviate the very substantial administrative burdens that three years of rate re-regulation has imposed.

### III. CONCLUSION

OCTA applauds the Commission for its initiative in proposing the establishment of uniform rates. Uniform rates have the potential not only to benefit cable operators, but subscribers and local franchising authorities as well. However, in order to succeed, uniform rates must be calculated, implemented and subjected to regulatory approval in a simple and streamlined fashion. Wherefore, OCTA supports the Commission's proposal to establish a uniform

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<sup>17</sup> 1992 Cable Act, codified at 47 U.S.C. Section 543(b)(1).

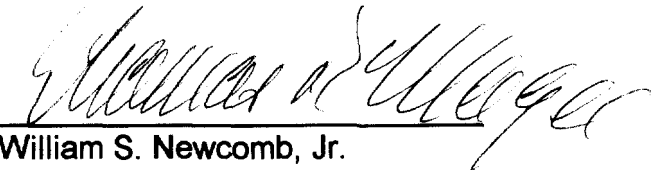
<sup>18</sup> Id. at 543(b)(2)(A).

rate-setting methodology and respectfully requests the Commission to adopt the proposals outlined in these Comments.

Respectfully submitted,

**OHIO CABLE TELECOMMUNICATIONS  
ASSOCIATION**

by:



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February 12, 1996